

In re Tesla, Inc. Securities Litigation, Case No. 3:18-cv-04865-EMC (N.D. Cal.)
Defendants' Disclosures for Day 6 - January 25, 2023

Witness	Ex.	Plaintiff's Objections	Defendants' Responses	Ruling
Antonio Gracias	8	No objection	N/A	
Antonio Gracias	9	No objection	N/A	
Antonio Gracias	10	No objection	N/A	
Antonio Gracias	11	No objection	N/A	
Antonio Gracias	12	No objection	N/A	
Antonio Gracias	13	No objection	N/A	
Antonio Gracias	53	No objection	N/A	
Antonio Gracias	81	No objection	N/A	
Antonio Gracias	82	No objection	N/A	
Antonio Gracias	83	No objection	N/A	
Antonio Gracias	89	No objection	N/A	
Antonio Gracias	94	No objection	N/A	
Antonio Gracias	96	No objection	N/A	
Antonio Gracias	101	No objection	N/A	
Antonio Gracias	102	No objection	N/A	
Antonio Gracias	130	No objection	N/A	
Antonio Gracias	137	No objection	N/A	
Antonio Gracias	139	No objection	N/A	
Antonio Gracias	170	No objection	N/A	
Antonio Gracias	171	No objection	N/A	
Antonio Gracias	173	No objection	N/A	
Antonio Gracias	201	No objection	N/A	
Antonio Gracias	225	No objection	N/A	
Antonio Gracias	312	No objection	N/A	
Antonio Gracias	318	Fed. R. Evid. 401, 402. Exhibit 318 is a "Disclosure Controls and Procedures" document dated May 20, 2010. This document is dated over	Plaintiff has claimed that Tesla's board failed to properly supervise and control Mr. Musk and also failed to put in place and implement appropriate	

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		eight years prior to the tweets at issue in this case, is also dated prior to the November 2013 Form 8-K that identifies Mr. Musk's twitter as a formal communication for Tesla, and does not contemplate disclosures made via Twitter. Therefore, it cannot even be said to apply to Musk's Twitter. This document is not relevant and inadmissible under 402.	procedures concerning the review and disclosure of material, non-public information. Plaintiff seeks to question the board about the procedures they had in place (including by introducing select exhibits), but improperly attempts to prevent the board from referencing some of those procedures, such as those covered extensively in Exhibit 318. The Disclosure Controls and Procedures in Exhibit 318 are undoubtedly relevant to the board's duties and liability under Section 20(a), and the board should be permitted to be questioned about them.	
Antonio Gracias	711	Fed. R. Evid. 401, 402, 403, 801. Exhibit 711 is an email chain from August 24-25 discussing a potential NYT article that would be published on August 26, 2018 The email chain discusses how Tesla could improve the narrative around the company's decision to abort the go-private transaction. The emails do not provide a real-time or objective description of what occurred but instead seek to inject a favorable spin into the potential article. Therefore, it risks misleading the jury by obscuring what actually happened with a post hoc editorialization of what happened. The email does not have the "tendency to make a fact [at issue in the case] more or less probable." It should be excluded under 402. In addition to being irrelevant, the email chain contains numerous instances of hearsay and hearsay within hearsay. As the email is after the Class Period, Defendants are using Exhibit 711 for the truth of	Exhibit 711 is not hearsay because Defendants are not offering it to prove the truth of the matter asserted (e.g., to prove that <i>in fact</i> Mr. Gracias thought "it is important [to give the press] additional information . . . for context," or that Mr. Musk was <i>in fact</i> "seeking views from his board and advisors," or that a particular board meeting <i>in fact</i> "was not scheduled" and Mr. Musk just "convened the directors to have a face to face discussion"). Rather, Exhibit 711 is being offered to show Mr. Gracias' state of mind, which is specifically exempted from the rule against hearsay. Fed. R. Evid. 803(3). Mr. Gracias and Tesla's other board members are being accused of failing to properly supervise and control Mr. Musk and failing to put in place and implement appropriate procedures concerning the review and disclosure of material, non-public information. Documents reflecting their contemporaneous	

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		the matter asserted, including, but not limited to, the topics in the proposed article (711-5 – 711-6); whether the proposal was possible (711-4); whether the idea was “spur of the moment” (711-4); Musk’s hearsay statement that “Antonio was not aware of the decision” (711-3); “This was a carefully considered decision” (711-2); and “Silver Lake told us they were confident they could get a deal done” (711-1). The email chain is clear hearsay and has no probative value.	actions and beliefs go directly to their state of mind and whether they performed their duties in good faith. Exhibit 711 is thus highly relevant the board’s liability under Section 20(a), among other things.	
Antonio Gracias	802	No objection	N/A	
Egon Durban	101	No objection	N/A	
Egon Durban	174	No objection	N/A	
Egon Durban	175	No objection	N/A	
Egon Durban	179	No objection	N/A	
Egon Durban	180	No objection	N/A	
Egon Durban	182	No objection	N/A	
Egon Durban	189	No objection	N/A	
Egon Durban	190	No objection	N/A	
Egon Durban	191	No objection	N/A	
Egon Durban	193	No objection	N/A	
Egon Durban	194	No objection	N/A	
Egon Durban	201	No objection	N/A	
Egon Durban	361	No objection	N/A	
Egon Durban	817	No objection	N/A	
Deepak Ahuja	92	No objection	N/A	